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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,052	12/04/2001	Adelmo Monsalve-Gonzalez	5553	9205
30173	7590	05/19/2005	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 05/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,052

Applicant(s)

MONSALVE-GONZALEZ ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 1-9,16-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley

Stanley discloses a method of preparing a bran product. The method comprises the steps of reacting the bran with lower aliphatic carboxylic acid, acid halide, ester or anhydride and bleaching the reacted bran with one or more bleaching agents. The agents used are peroxides, chlorites, peracids and ozone. Following bleaching, the bleached bran is isolated from the bleaching medium by filtration, centrifugation etc, washed and dried to form a free-flowing particulate. (see columns 1,3-4 and example 5). The pH is adjusted to an acidic level after the esterifying step and before the bleaching step. Example 5 discloses adjusting the ph to 5 before bleaching. This meets the limitation of acidifying the bran to a pH of about 4-6 prior to treating with ozone.

The teaching of Stanley is described above. Stanley does not disclose the bran is wheat bran or red wheat bran, the size of the bran is about 100 microns, the steps recited in claims 10-15, the acid as in claims 16-17, the moisture content of the bran, the amount of ozone, admixing the bran with flour, forming a dry mix, forming cereal pieces, adding the bran to a grain product and forming the grain product into finished baked good.

While Stanley discloses the preferred bran is corn bran, other material including vegetable, cereal and fruit sources can be used as the starting material. Therefore, it would have been obvious to one skilled in the art to use other type of bran when desiring to bleach such bran product. Stanley discloses bran of varying particle sizes; it

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would have been an obvious matter of choice to pick any size. It would also have been obvious to determine the amount of ozone to be used through routine experimentation depending on the degree of bleaching desired and the amount of time at which bleaching is carried out. For example, a higher concentration will reduce the bleaching time or vice versa. The bran product disclosed by Stanley is a dietary fiber material having improved color stability. It would have been obvious to one skilled in the art to add the bran product to any food product including dry mix, cereal, grain product, baked goods etc...when one desires to increase the fiber content of that product.

Stanley discloses adding the bran to dough for bread, crackers, cookies and biscuits. If the bran can be added to the dough, it can be added to the flour which is used to make the dough. The use of whole wheat flour or regular wheat flour would have been an obvious matter of choice. It would also have been obvious to add the bran to grain product and cereal product because these food products are typically made to have a high fiber content. The addition of the bran will serve such purpose. The making of cereal pieces is well known in the art; thus, the steps of making the cereal pieces would have been readily apparent to one skilled in the art. It would also have been obvious to use grain product to prepare baked good because they are commonly prepared from grain product. The properties claimed are obviously found in the Stanley product because the bran is treated with ozone just as claimed. Since the bran is treated so that it is bleached, it is obvious the amount of ozone used has to be sufficient to bleach. Stanley discloses the bleaching results in a lighter colored bran. During the process of bleaching, the properties such as increased vanillin and reduced ferulic acid are

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obtained because the bran is treated with ozone. Applicant has not shown any unexpected result or criticality with the amount claimed. When the bran is added to whole wheat flour, it is obvious the pH will be the same as claimed because the same flour is used.

Claim 1-3, 6-21, 23, 24, 25, 26, 33, 34, 36-39 rejected under 35 U.S.C. 102(e) as being anticipated by Wo 02/21936A2.

Wo 02/21936 discloses a bleached bran and methods of preparation. The starting material for the bleaching can be any type of wheat such as white wheat or red wheat. The bran can be any suitable particle size such as 100 microns or more. The process comprises the steps of treating the bran with about .02-.1% chelating agent for about 1-15 minutes at a temperature of about 70-90 degree c, washing and rinsing the bran, filtering the bran, blanching the bran for 3-10 minutes at 75-85 degree C, washing and rinsing the blanched bran and treating the bran with .1-2% ozone at pH 4-5. The moisture content of the bleached bran is 4-12%. The anti-oxidant activity is increased up to 30-35% and the ferulic acid is reduced. The bleached bran can be recombined with flours. The bran can be put into dry mixes, ready-to-eat cereals, refrigerated uncooked or bakeable dough, cooked cereal dough. The chelating agents used are selected from the ones listed on page 7 lines 25-29. (see pages 6-10, 12-13, 16, 18)

The reference discloses the limitations of the above cited claimed. The claimed language does not exclude the additional steps disclosed in the patent. The property of the reduced ferulic acid is inherent; also, page 16 discloses the ferulic acid is present in reduced amount as compared with native bran. Since the treatment with ozone is not

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done under reduced or increased pressure, it is inherent the process takes place at atmospheric pressure.

In the response filed 2/14/05, applicant argues the World Publication is not seen to disclose the particular range of parts of ozone to bran, the particular resulting ferulic acid as specified in claim 1. This argument is not persuasive. Applicant's attention is directed to page 12 lines 28-29 where the publication discloses " In one embodiment, whiteness of the bleached bran is improved by treating the bran with .1-2% ozone at pH of 4.5". This range falls within the range claimed. Since the amount of ozone is the same and the same starting material is used, it is inherent the same reduction in ferulic acid is obtained. The rejection sets forth a clear case of inherency because the same treatment is done and the same materials are used. If applicant contends the prior art does not obtain the same end result, the burden of proof is shifted to applicant to show that the prior art does not have the property as claimed. Applicant further argues claim 10 requires acidifying the bran prior to the bleaching process while the Publication discusses subjecting brand to a bleaching process in the presence of an alkaline. This argument is not persuasive because the Publication teaches to treat the bran with ozone at a pH of 4.5 which is an acidic pH; thus, the treatment with ozone is not in the presence of an alkaline. Applicant also argues the Publication does not specify blanching to inactivate catalase and peroxidase enzymatic system. This argument is not understood because the Publication clearly discloses on page 8 lines 27-29 " the washed bran is then blanched or heat-treated in a blanching step to inactivate indigenous catalase and peroxidase enzymatic system. The reference discloses all the

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limitations pointed out by applicant and the examiner points to the pages and line numbers where each of the features is disclosed.

With respect to the Stanley reference, applicant argues there is no mention of using ozone to reduce ferulic acid level and certainly there is no teaching to react the bran with the specific ration of ozone to parts of bran. Stanley teaches to treat bran with ozone. The finding of the amount is a variable that is readily determined by one skilled in the art. It would have been obvious to one skilled in the art to determine the amount that gives the degree of bleaching desired. This can readily be determined through routine experimentation with various amounts to determine the optimum one. The reduction of the ferulic acid is a result of the bleaching process. When bleaching is done, it is obvious the bleaching is carried out to a desired degree of whiteness, the reduction in ferulic acid obvious will occur through the bleaching process and can vary with the degree of bleaching. Applicant has not shown any unexpected with the amount of ferulic acid claimed. It would have been obvious to one skilled in the to vary this variable depending on the flavor wanted in the bran and the degree of bleaching wanted in the bran. Applicant states in the specification, the starting bran is characterized by a native concentration of ferulic acid that ranges from about 20-40 ppm. Thus, even without any treatment, the bran can still have a ferulic acid level that falls within the range claimed. The same point is also made with the concentration of vanillin because it is a result obtained from the bleaching process and Stanley teaches such bleaching process. Applicant further argues the rejection uses the claims as a blueprint to modify at least eleven different aspects of the Stanley disclosure. While stating this, applicant

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does not point out how the rejection uses the claims as the blueprint. Also, while applicant points to the lacking of 11 features in Stanley, applicant does not argue the obviousness position taken. Applicant reiterates the lack of teaching of the amount of ozone. This issue is fully addressed above.

Applicant's arguments filed 2/14/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lien Tran
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PRIMARY EXAMINER
Group 1700